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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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11/09/2005

Edward C. Meagher

2897 US

4353

50855

7590

07/11/2008

Tyco Healthcare Group LP
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EXAMINER

WEEKS, GLORIA R

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

07/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Oath/Declaration

1. This action is in response to the amendment and remarks received on March 26, 2008.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cummins (US 2004/0028502) in view of Hermes (USPN 5,282,829).

In reference to claims 1-8, Cummins discloses a surgical fastener comprising: upright leg 10; a deformable base leg 16 having a tissue piercing tip 18. Cummins does not disclose a capillary in the base leg of the surgical fastener. Hermes teaches a surgical fastener having an upright leg 5 and a base leg 3 having a tissue piercing tip 7, wherein the base leg has multiple rupturable capillary defining a reservoir that retains a bonding, medicinal or therapeutic agent, wherein upon rupturing¹ of the capillary portion of the fastener, a liquid is released (column 5 lines 13-61; column 6 lines 18-33). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the surgical fastener of Cummins to have at least one rupturable capillary, since column 5 lines 2-12 states that such a modification provides focal application of a medicine for the purpose of treating a specific region of tissue, while also

¹ Break open (American Heritage Dictionary)

providing a drug delivery system to a wound for the purpose of speeding up the healing process of the wound.

Response to Arguments

5. Applicant's arguments filed March 26, 2008 have been fully considered but they are not persuasive.

6. During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

7. Applicant has amended the claimed invention(s) to include the limitation of "at least one capillary being rupturable to dispense liquid simultaneously upon deformation" of each surgical fastener. Examiner has broadly interpreted the term "rupturable" to be a surface of the capillary breaking open, which is found to be consistent with Applicants' specification. The point at which a surface of the capillary dissolves to expose the liquid contents of the surgical staple is found to define the moment the capillary ruptures, as the capillary is now open to release the liquid contents.

Since Hermes teaches providing multiple capillaries in a single surgical staple, Examiner finds Hermes to reasonably suggest simultaneous release of plural capillaries in the surgical staple, wherein the capillaries do not rupture to permit the simultaneous release until the surgical staples have been positioned within tissue. The modification of Cummins in view of Hermes would disclose the release of the liquid to be upon deformation of the surgical staple within tissue. Thus, Examiner maintains the rejection of Applicants' invention over Cummins in view of Hermes.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

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/Gloria R. Weeks/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit
3721

July 10, 2008